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Letter dated 27 August 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 21 May 2003 (S/2003/595).

The Counter-Terrorism Committee has received the attached third report from the Republic of San Marino submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 21 August 2003 from the Permanent Representative of San Marino to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to refer to your letter dated 16 May 2003, and to forward herewith the original of the report on counter-terrorism of the Government of San Marino, which was sent already via fax to the Secretariat on 15 August 2003 (see enclosure).*

(*Signed*) Gian Nicola Filippi **Balestra**
Ambassador
Permanent Representative

* Annexes are on file with the Secretariat and are available for consultation.

Enclosure

San Marino, 13 August 2003

Ref. 7363/AA/19

Referring to the letter dated 16 May 2003 (Ref. S/AC.40/2003/MS/OC.263) written by Inocencio Arias, Chairman of the Counter-Terrorism Committee, we are pleased to provide a further progress report following that submitted by the Government of San Marino on 8 July 2002 pursuant to paragraph 6 of Security Council Resolution 1373 (2001):

1. Implementation measures

Criminalization of terrorist financing

- We wish to clarify that the Bill drafted in 2002 on anti terrorism was examined last year only by the Congress of State (Government) and not by the Great and General Council (Parliament). Before the Bill could be submitted to Parliament for consideration, the Congress of State underwent a new crisis in October which resulted in the formation of a new coalition in December 2002. Hence, the examination of the Bill had to be postponed to 2003. By way of Decision No. 16 of 17 March 2003 the Congress of State mandated the Minister of Finance to start the relevant parliamentary procedures for the final approval of the Law laying down "Provisions on Anti-Terrorism, Anti-Money Laundering and Anti-Insider Trading" (copy of the latest draft, slightly different from the one supplied in 2002, is herewith attached in English and Italian, as well as copy of Decision No. 16 of 17 March 2003). Said Bill passed the first reading by the Great and General Council and is now under examination by the Parliamentary Commissions for Foreign Policy and Finance. The Bill is expected to pass the second reading by next fall.

  As illustrated in the previous report, the Bill provides for:

  i) the criminalization of terrorism (or subversion of the constitutional order), participation in terrorist organizations, and of the financing of terrorism (Art. 1 of the Bill);
  ii) rules supplementing the Anti-Money Laundering Law (No. 123 of 15 December 1998) and incorporating the modifications recently occurred within the European Union and recommended by FATF and the Council of Europe (Articles 7-9);
  iii) a provision on the freezing of capitals or other financial assets or property held, or of any account or business relationship maintained with San Marino banking and financial intermediaries (Art. 16),
  iv) special investigation techniques (art. 15) and
  v) rules on insider trading (Articles 10-12).

The reformulation of Art. 199 bis of the Criminal Code under the Draft Law will also criminalize self-laundering.

Pending the passing of the Bill, terrorist acts, terrorist organizations and the financing of terrorism can be related to and punished under the following articles of the Criminal Code: 163 (unintentional homicide), 164 (unintentional injury), 236 (epidemics and mass murder), 237 (public disaster), 239 (threat of disaster), 241 (attacks on public health through deterioration of the environment), 242 (attacks on public health through manufacturing, corruption, alteration and circulation of foodstuffs and drugs), 243 (attacks on public health through manufacturing, corruption, alteration and circulation of commodities), 246 (deterioration of the natural environment). Under Article 6 of the Criminal Code, all these crimes are punishable if perpetrated in the territory of the Republic of San Marino. If perpetrated abroad, however, they are punishable if committed to the detriment of a San Marino national. The crimes referred to in Articles 237 and 239 of the Criminal Code, if

committed through hijacking of aircraft having the territory of San Marino as first point of arrival or point of departure, are in any case punishable even if committed abroad.

Provided that they meet the relevant criteria, all the crimes cited above may constitute predicate offences under Law No. 123 of 15 December 1998 on Anti-Money Laundering, which is based on an "all crimes" approach. With regard to the possibility of freezing funds suspected of being related to terrorist financing at the request of another country, Congress Decision No.1 of 5 November 2001 still applies (copy supplied with the 2002 report). For greater details on assistance granted upon request of a foreign country see section 1.4 "International Cooperation".

1.3 Protection of the economic and financial system

Two important steps have been taken to increase and enhance protection of the economic and financial system.

Firstly, the Office of Banking Supervision issued Circular N. 33 on 12 February 2003, addressed to banks and financial companies, introducing the obligation to collect, besides the customer's personal data and all data contained in the ID document, also the business/professional activity of the same.

Under said Circular, personal data shall be periodically checked with documents other than those for entering business relationships with banks (for example utility billing).

With regard to "know-your-customer rules", banks and financial companies have to analyse the transactions conducted by customers on the basis of their economic/asset capacity, by making a critical comparison between the objective features of transactions (such as type, amount and nature) and the customer's background (economic capacity, business activity, other information).

Said Circular, moreover, explicitly provides for a compliance officer with anti-money laundering functions and in charge of relations with the Office of Banking Supervision, as well as for staff training.

Importantly, the Circular also contains an extended and updated list of indicators of unusual/suspicious transactions (already included in Circular N. 26/1999) to be carefully examined and, if appropriate, reported:

a) Indicators of unusual transactions concerning all categories of transactions

- Frequent transactions of the same nature which are not justified by the client's business activity and seemingly conducted for the purpose of dissimulation;
- Structured or layered transactions, especially if aimed at avoiding recording requirements;
- Transactions for considerable sums, which are unusual compared to those normally carried out by a customer, especially failing plausible economic and financial reasons;
- Illogic transactions, especially when economically and financially disadvantageous for a customer;
- Transactions conducted by a customer on behalf or in favour of third parties, if their business relationship is seemingly unjustified;
- Transactions conducted by third parties on behalf or in favour of a customer, with no plausible justification;
- Clearly inaccurate or incomplete information is given when requesting a transaction, thus arising suspicion that essential information is purposely concealed, especially if it concerns parties interested in the transaction;
- Transactions with counterparts established in geographical areas considered "off-shore centres" included in the list of non cooperative countries and territories, regularly published by FATF (NCCT countries, the

first list of which is enclosed to this Circular), or located in drug- trafficking and -smuggling areas, when such transactions are not justified by the customer's business activity or by other circumstances.

b) Indicators of unusual transactions concerning cash or electronic transactions
- Considerable cash withdrawals, except where the customer needs the money for special reasons;
- Considerable cash deposits which are not justified by the client's business activity;
- Use of cash instead of usual means of payment;
- Exchange of banknotes for smaller or larger denominations and/or in other currencies, especially when such exchange does not take place through the current account.

c) Indicators of unusual transactions concerning financial instrument transactions and insurance policies
- Negotiation of financial instruments without transactions taking place through the current account;
- Negotiation of financial instruments not publicly widespread which take place very frequently and for substantial amounts, especially if involving counterparts established in non OECD countries;
- Co-ownership or co-registration of financial instruments or insurance policies, or changes in registrations with no plausible justifications.

d) Indicators of unusual transactions concerning life insurance policies and capitalization ratios
- Underwriting of different insurance policies with payment of premiums by means of bank cheques endorsed several times;
- Underwriting of a life insurance policy with the policy-holder being the beneficiary,
- Indication of more beneficiaries of insurance policies for the purpose of fractionating payments, seemingly unjustified by the business relation between the customer and the beneficiaries;
- Settlement, in the short run, of premiums related to several policies underwritten by different customers and having the same beneficiary;
- Considerable and/or simultaneous requests for redemption and/or borrowing related to more insurance policies, especially when these entail accepting unfavourable conditions, or frequent operations of partial redemption related to high single premium policies.

e) Indicators of unusual transactions concerning transactions in other products and services
- Use of letters of credit and other systems of commercial financing for international money transfers, seemingly unjustified by the customer's usual business activity;
- Trust ownership of goods and/or financial instruments, if these have been held by the customer for a short period of time, where seemingly unjustified by the customer's personal wealth or business activity;
- Repeated use of safety boxes or other custody services, or frequent deposits and withdrawals of sealed correspondence, unjustified by the customer's business activity or habits;
- Issue of proxies to operate safety boxes to third parties that are neither family members, nor involved in any type of business relationship that would justify such issue;
- Buying or selling of high quantities of coins, precious metals or other values, seemingly unjustified by and/or inconsistent with the customer's economic conditions;
- Transactions unjustified by the customer's business activity and characterised by:
    - frequent deposits of cheques or requests for bill discounting, especially for round numbers, with several endorsements, showing other recurring features, or issued to the bearer or to the drawer;
    - calls and returns of unpaid bills sometimes followed by protest;
    - substantial balancing of crediting and debiting.

f) Indicators of unusual transactions concerning unusual customer's behaviours

- Customers refusing or unreasonably reluctant to: provide the information necessary to conduct transactions, declare their own business activities, submit accounting or other documents, indicate relations with other intermediaries, and provide any other information which would normally enable the client to carry out banking, financial or insurance transactions;

Secondly, a new law was recently passed (in June 2003) providing for a functional integration between the Office of Banking Supervision and the Central Bank, thus allowing the further strengthening of the supervisory system, also for the purpose of countering-money laundering and terrorist financing. Under said Law, (Law No. 86 of 27 June 2003), the new body (Central Bank of the Republic of San Marino) has a two-fold structure: Supervision on the one hand, and the Central Bank on the other. More specifically, Supervision preserves all the functions previously attributed to the OBS (including those as Financial Intelligence Unit) and is totally independent from the management and administration of the Central Bank. The new body allows the former OBS to draw on the resources and organisational capacities of the Central Bank, including its employees, some of whom may be assigned to the Supervision Department. (Copy of Law No. 86/2003 is herewith attached in English and Italian).

With regard to the extension of reporting obligations to other persons and/or entities performing financial activities (e.g. attorneys, notaries, accountants, etc), relevant provisions, in line with the 2nd EU Directive, are set forth in Article 8 of the Draft Law described above, which will supplement Art. 8 of the Anti-Money Laundering Law (Law No. 123/1998). Pending the passing of the Bill, however, the Office of Banking Supervision started, as early as 2002, making such persons and entities aware of the new provisions to be complied with in the near future.

With regard to the recommendations in the Document PC-R-EV (00)22 Rev. of the Council of Europe, most of them have been addressed by means of the provisions illustrated above. Currently the OBS is also gradually introducing in the San Marino banking and financial system all the Basel Core Principles.

As for border controls on capital transfers, borders are subject to random controls and constant patrolling by the police forces, and the small size of the country (61 square km) makes such controls effective.

It is worth recalling that all transactions exceeding EUR 15,500 have to be conducted through a bank or a licensed financial intermediary under Art. 5 of the Anti-Money Laundering Law No. 123/1998 (supplied last year).
Lastly, the Government is considering the introduction of a law provision on corporate criminal liability.

1.4 International Cooperation

The European Convention on Extradition (1957) and the European Convention on Mutual Assistance in Criminal Matters (1959) were both signed on 29 September 2000. Their ratification is still under way.

The European Convention on the International Validity of Criminal Judgements (1970) was ratified on 26 February 2002 and entered into force on 18 July 2002.

San Marino has MLA treaties with Italy (Treaty on Friendship and Good Neighbourhood of 31 March 1939) in criminal, civil and administrative matters, and with France (Treaty on Reciprocity of 14 January 1954) in criminal and civil matters. San Marino judicial authorities may provide assistance in criminal matters to other states even in the absence of a treaty or other formal agreement, on the basis of rogatory commissions, subject to authorization by the Government authorities. As for extradition, San Marino signed bilateral treaties with Belgium (Treaty of 15 June 1903), France (Treaty of 30 April 1926), Italy (1939 Treaty), United Kingdom (Treaty of 10 October 1899), the Netherlands (Treaty of 7 November 1902) and USA (Treaty of 10 January 1906). In the absence of an extradition treaty a person may still be extradited to the requesting country, within the limits laid down in Article 8 of the Criminal Code. As a rule, the extradition of nationals is prohibited unless it is otherwise expressly agreed by treaty. With regard to multilateral treaties, the European Convention on Extradition (1957)

and the European Convention on Mutual Assistance in Criminal Matters (1959) were both signed on 29 September 2000. Their ratification is under way.

- European Convention on the Suppression of Terrorism (Strasbourg, 1977), ratified on 26 Feb. 2002 and entered into force on 18 July 2002;
- International Convention for the Suppression of Terrorist Bombings (New York, 1997), acceded to on 26 Feb. 2002 and entered into force on 11 April 2002;
- International Convention for the Suppression of the Financing of Terrorism (New York, 1999), ratified on 10 Dec. 2001 and entered into force on 10 April 2002.
- UN Convention Against Transnational Organised Crime and its two Protocols (New York, 2000), signed on 14 December 2000; ratification is under way.

San Marino is not a party to the 1951 Geneva Convention on refugee status.

We are able to supply copy of the Self Assessment Questionnaire on the 8 Special Recommendations by FATF on Terrorist Financing (herewith attached), where a lot of information can be found, though the Questionnaire is due to be updated by September 2003.

Early in April this year San Marino had its second round of mutual evaluations by MONEYVAL (former PC-R-EV). The Second Report is due to be adopted by early 2004.

San Marino will hold the IMF Article IV consultations from 4 to 15 December 2003.

The OBS (now Supervision Department) has started negotiations to enter the Egmont Group.

ANNEXES

- Draft Law, "Disposizioni in materia di contrasto del terrorismo, del riciclaggio del denaro di provenienza illecita ed abuso di informazioni privilegiate" (*Provisions on Anti-Terrorism, Anti-Money Laundering and Anti-Insider Trading*)

- Congress of State Decision No. 16 of 17 March 2003

- Office of Banking Supervision's Circular No. 33 of 12 February 2003, "Disposizioni integrative agli intermediari abilitati per l'applicazione della legge 15 dicembre 1998 n.123" (*Supplementing provisions addressed to authorised intermediaries for the application on law n° 123 of 15 December 1998*)

- Law No. 86 of 27 June 2003, "Integrazione funzionale tra l'Ispettorato per il Credito e le Valute e l'Istituto di Credito Sammarinese" (*Functional integration between the Office of Banking Supervision (OBS - Ispettorato per il Credito e le Valute) and the San Marino Credit Institute (ICS - Istituto di Credito Sammarinese))*

- Self Assessment Questionnaire on the 8 Special Recommendations on Terrorist Financing (13 Sept. 2002)

- Relevant Articles of the Criminal Code and Code of Criminal Procedure.